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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 WARREN ERIC ARMSTEAD,)
09 Petitioner,) CASE NO. C11-1352-MJP-MAT
10 v.) (CR04-512-MJP)
11 UNITED STATES OF AMERICA,) ORDER RE: PETITIONER'S
12 Respondent.) PENDING MOTIONS
13 _____)

14 This is an action brought pursuant to 28 U.S.C. § 2255. This matter comes before the
15 Court at the present time on petitioner's motion to correct a mistake in one of his grounds for
16 relief, petitioner's request for copies of documents and for leave to proceed *in forma pauperis*,
17 petitioner's motion requesting trial transcripts and discovery, and petitioner's motion for an
18 extension of time. The Court, having reviewed petitioner's motions and requests, the
19 government's responses to petitioner's requests for documents, transcripts and discovery, and
20 the balance of the record, does hereby find and ORDER as follows:

21 (1) Petitioner's motion to correct a mistake in his amended § 2255 motion (Dkt. No.
22 14) is GRANTED. Petitioner requests in the instant motion that he be permitted to change the

01 word “sentencing” that appears in Ground 23(e) of his amended § 2255 motion to the word
02 “suppression.” As the change is minor, and the government had notice of the change prior to
03 filing its response to petitioner’s § 2255 motion, it is appropriate to permit the requested
04 change.

05 (2) Petitioner’s request for copies of documents (Dkt. No. 15) is DENIED.
06 Petitioner requests that the Clerk provide him with a series of documents including grand jury
07 minutes and over 50 documents from the criminal case file. As the government notes, Rule
08 6(e) of the Federal Rules of Criminal Procedure creates a general rule of secrecy concerning
09 grand jury matters. However, a court may order disclosure of grand jury materials when the
10 defendant demonstrates a “particularized need” for such materials. *See Dennis v. United*
11 *States*, 384 U.S. 855, 870-71 (1966). In this case, petitioner offers no explanation of why he
12 needs access to secret grand jury materials, he merely includes “grand jury minutes” on a
13 laundry list of other materials he wishes to obtain in order to litigate his § 2255 motion.
14 Petitioner has not met the onerous standard for disclosure of grand jury materials and his
15 request for such documents is therefore denied.

16 Petitioner also includes on his list a substantial number of documents filed in the
17 criminal case which gives rise to the instant § 2255 motion. As plaintiff was previously
18 advised, documents may be obtained from the criminal case by simply sending a request to the
19 Clerk’s Office together with the requisite copy fee. (Dkt. No. 9 at 2.) The Court notes that
20 petitioner submitted with his request for documents an application to proceed *in forma*
21 *pauperis*. The Court presumes that the purpose of this submission is to establish his indigency
22 and thereby obtain the requested documents at no cost. However, a prisoner who is granted

01 leave to proceed *in forma pauperis* is merely authorized to file an action without prepayment of
02 the filing fee. See 28 U.S.C. § 1915. *In forma pauperis* status does entitle a prisoner to free
03 copies of documents from the existing Court record. Accordingly, petitioner's application to
04 proceed *in forma pauperis* (Dkt. No. 16) is STRICKEN as moot.

05 (3) Petitioner's motion requesting trial transcripts and all discovery (Dkt. No. 20) is
06 DENIED. To the extent petitioner seeks transcripts of his trial and related proceedings, the
07 Court notes that the transcripts are a part of the record of his criminal case and may, as indicated
08 above, be obtained by submitting a request to the Clerk's Office together with the requisite
09 copy fee.

10 To the extent petitioner seeks discovery, petitioner has not demonstrated his need for
11 such materials. A habeas petitioner is not entitled to discovery as a matter of ordinary course.
12 However, Rule 6(a) of the Rules Governing Section 2255 Proceedings in the United States
13 District Courts provides that a judge has the discretion to grant a party leave to undertake
14 discovery in § 2255 proceedings if the party is able to demonstrate that good cause exists for the
15 request. The Supreme Court has explained that good cause exists "where specific allegations
16 before the court show reason to believe that the petitioner may, if the facts are fully developed,
17 be able to demonstrate that he is . . . entitled to relief" *Bracy v. Gramley*, 520 U.S. 899,
18 908-09 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). A review of petitioner's
19 claims fails to reveal that there is any basis for the requested discovery under the standard set
20 forth above.

21 (4) Petitioner's motion for an extension of the deadline to file a response to the
22 government's answer (Dkt. No. 21) is GRANTED. Petitioner is directed to file and serve his

01 response not later than ***April 2, 2012***. Petitioner is advised that his response may not exceed
02 ***thirty (35) pages*** in length. Petitioner is also advised that no further extensions of the response
03 deadline or the page limitation will be granted.

04 (5) Petitioner's § 2255 motion (Dkt. No. 1) is RE-NOTED on the Court's calendar
05 for consideration on ***April 6, 2012***.

06 (6) The Clerk is directed to send a copy of this Order to petitioner, to counsel for
07 respondent, and to the Honorable Marsha J. Pechman.

08 DATED this 6th day of February, 2012.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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